IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.123 OF 2003

Sahakar Maharshi Late Bapurao
Deshmukh Co-operative Sugar
Factory Ltd., At Post - Wela,
Taluka - Hinganghat,
District: Wardha, through
Labour Officer
Laokumar Durgadas Dahir,
age 50 years, Occ: Service,
residing at - as above. .... Applicant

- Versus -

1. Deepak Krushnarao Nikam,
An adult, Occ: Transport,
residing at Post Dabhadi,
Taluka - Malegaon,
District Nashik.

2. The Registrar of Co-operative
Societies, Maharashtra State,
Central Building,
Pune-411 001. .... Respondents

Shri Jayesh B. Kocheta for the Applicant.

Shri P.N. Joshi for the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 25, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties. Perused the records. Rule. By consent, the rule is made returnable forthwith.

2. The applicant challenges the order dated 28-8-2002

passed by the trial Court rejecting the application under Section 9-A of the Code of Civil Procedure raising the issue of lack of jurisdiction to the Court at Malegaon.

3. The respondent No.1 herein has filed a suit claiming recovery of an amount of Rs.1,06,999/-, besides for injunction against the applicant on the allegation of breach of agreement between the parties. The applicant while filing its written statement also moved an application under Section 9-A of the C.P.C. raising the issue of lack of jurisdiction to the Court at Malegaon to entertain the suit on the ground that no cause of action had arisen within the territorial jurisdiction of the Court at Malegaon and the contract was arrived at between the parties at Wardha and the alleged breach also has been committed at Wardha and that therefore any dispute in that regard could be adjudicated by the Court at Wardha and not by the Court at Malegaon. The applicant has also sought to raise the plea about the absence of jurisdiction on the ground of applicability of the provision of Section 91 of the Maharashtra Co-operative Societies Act, 1960 to the matter in issue. However, the learned Advocate for the applicant has fairly stated that the applicant is no more interested in pursuing the said objection. As the objection in relation to the absence of jurisdiction to the Court at

Malegaon has been rejected by the impugned order, the applicant has preferred the present application.

4. Placing reliance in the decision of the Apex Court in the matter of **A.B.C. Laminart Pvt. Ltd. and another v. A.P. Agencies, Salem,** reported in (1989) 2 SCC 163 and drawing attention to the contents of para 5 of the impugned order, the learned Advocate for the applicant has submitted that the agreement in question was clearly held to have been finalised at the premises of the applicant which are admittedly situated at Wardha and the respondent had not disclosed any cause of action having arisen within the territorial jurisdiction of the Court at Malegaon and therefore the Court below erred in holding that the Court at Malegaon had jurisdiction to entertain the suit. The learned Advocate for the respondent (No.1), on the other hand, has stated that the Court below has clearly held that the negotiations for the agreement were entered into between the parties at Malegaon and therefore the Court at Malegaon had jurisdiction to entertain the suit and the said finding cannot be found fault with.

5. Perusal of the impugned order discloses that undoubtedly the Court has found that the negotiations in relation to the contract between the parties did take place at Dabhadi at Malegaon. However, it has also held

that the contract was finalised at the premises of the applicant and it is not in dispute that the premises of the applicant are at Wardha. There is nothing on record to disclose that the applicant had any premises, at the relevant time, at Dabhadi or any where in Malegaon. The trial Court, except holding that the negotiations in relation to the contract had arisen within the Taluka of Malegaon in the District of Nashik, has also not been able to arrive at any finding to the effect that any part of the cause of action had arisen at Malegaon. On the contrary, the specific finding by the trial Court, as stated above, is that the contract was finalised at the premises of the applicant.

6. The question of applicability of Section 20(c) of the C.P.C. can arise only when a part of cause of action arises within the territorial jurisdiction of the Court. Mere negotiations do not form the part of the cause of action for filing a suit. The Apex Court in **A.B.C. Laminart's** case (supra) has clearly held that:-

> "In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of, its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should

> have been performed and the breach occurred."

The Apex Court has further held that:-

> "The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated."

Obviously, at the time of negotiations in relation to the contract, it does not reach the stage of finality of the contract and therefore it cannot be said that the place where the negotiations in relation to the contract were conducted would form part of the cause of action in a suit for damages for breach of the contract. Being so, the applicant is justified in contending that the trial Court inspite of having found that contract was finalised at Wardha and no part of the cause of action had arisen within the territorial jurisdiction of the

Court at Malegaon, erred in holding that the Court at Malegaon had jurisdiction to try the suit. Hence the impugned order in that regard cannot be sustained and is liable to be set aside as the Court at Malegaon has no jurisdiction to entertain the suit.

7. It is seen that the impugned order was passed on 28-8-2002. The suit was filed on the ground that the cause of action had arisen in February and April, 2000. Obviously, if the trial Court has no jurisdiction to entertain the suit, it would be obligatory on the part of the trial Court to return the plaint in terms of the provisions of Order 7, Rule 10 of the C.P.C. to enable the respondent to present the same in the Court of the competent jurisdiction.

8. In the result, therefore, the petition succeeds. The impugned order is hereby quashed and set aside. It is held that the Court at Malegaon has no jurisdiction to entertain the suit and therefore the trial Court is directed to return the plaint to the respondent in accordance with the provisions of Order 7, Rule 10 r/w Rule 10-A of the C.P.C. The rule is made absolute accordingly with no order as to costs.